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13 **UNITED STATES DISTRICT COURT**  
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 OUTERBRIDGE ACCESS  
16 ASSOCIATION, SUING ON BEHALF OF  
17 DIANE CROSS; and DIANE CROSS, An  
18 Individual,

19 Plaintiff,

20 vs.

21 MARIE CALLENDER'S PIE SHOPS,  
22 INC. d.b.a. MARIE CALLENDER'S #254;  
23 PACIFIC BAGELS, LLC d.b.a.  
24 BRUEGGARS BAGELS; COURTYARD  
25 HOLDINGS, LP; PSS PARTNERS, LLC;  
26 AND DOES 1 THROUGH 10, Inclusive,

27 Defendants.

Case No. 07-CV-2129 BTM (AJB)

**DEFENDANT MARIE  
CALLENDER'S PIE SHOPS, INC.'S  
CONDITIONAL NON-OPPOSITION  
TO PLAINTIFFS' MOTION TO  
AMEND**

Date: January 25, 2008  
Time: 11:00 a.m.  
Cttrm: 15

*\*Per Chambers, no oral argument unless  
required by the court.*

Complaint Filed: November 7, 2007  
Trial Date: None Set

28 Defendant Marie Callender's Pie Shops, Inc. d.b.a. Marie Callender's #254  
("Marie Callender's") does not oppose Plaintiffs' Motion to Amend the Original  
Complaint ("Motion to Amend"). However, the Motion to Amend and Proposed First  
Amended Complaint fail to address two issues raised in Marie Callender's Motion to

Dismiss Portions of Plaintiffs' Complaint Pursuant to F.R.C.P. 12(b)(1) and 12(b)(6) ("Motion to Dismiss") scheduled for hearing concurrently with Plaintiffs' Motion to Amend, specifically:

- (1) Plaintiffs have not and cannot establish organizational standing on behalf of Outerbridge because the organization itself has not suffered any alleged injury. *Small v. General Nutrition Cos., Inc.*, 388 F. Supp. 2d 83, 98 (E.D.N.Y. 2005).
- (2) This Court should decline to exercise supplemental jurisdiction over Plaintiffs' state disability claims as they pose "novel or complex issues of state law" that are best suited for resolution within the state court system. *Gunther v. Lin*, 50 Cal. Rptr. 317 (2006).

Accordingly, if Plaintiffs are unwilling to address these issues in their First Amended Complaint, Marie Callender's will move to dismiss and/or strike portions of the First Amended Complaint to conform with the relief sought in the Motion to Dismiss and as set forth herein.

Dated: January 4, 2008

CALL, JENSEN & FERRELL  
A Professional Corporation  
Scott J. Ferrell  
Lisa A. Wegner

By: /s/Lisa A. Wegner  
Attorneys for Defendant Marie Callender's  
Pie Shops, Inc. d.b.a. Marie Callender's #254